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**ALTERNATIVE DISPUTE RESOLUTION PLAN  
FOR  
800 MHz TRANSITION ADMINISTRATOR, LLC**

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Version 1.9

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## 1. INTRODUCTION

The Federal Communications Commission (“FCC” or “the Commission”), in its Report and Order, FCC 04-168, as supplemented by the Supplemental Order and Order on Reconsideration, FCC 04-294, and Memorandum Opinion and Order, FCC 05-174 (together, the “Order”),<sup>1</sup> directs the Transition Administrator (“TA”) to “facilitate” (¶ 198.5), “mediate” (¶ 191) and act as an “intermediary” in disputes between 800 MHz stakeholders that arise during the reconfiguration process (¶ 198.5). If these stakeholders are unable to reach agreement, the TA is directed to forward to the Public Safety and Homeland Security Bureau the record, “together with advice on how the matter(s) may be resolved.” ¶ 201; § 90.677(d)(2). The Order also empowers the TA to “mediate any disputes that may arise in the course of band reconfiguration; or refer the disputant parties to alternative dispute resolution fora.” ¶ 194 (the TA shall provide a “recommended decision or advice”).

The TA’s Independence Management Plan provides that all alternative dispute resolution (“ADR”) “procedures conducted by the TA pursuant to the Order will be governed by an ADR plan that has been developed, and will be implemented, maintained and managed, by the TA General Counsel consistent with the Order.” These functions shall be performed by the TA General Counsel, Squire, Sanders & Dempsey L.L.P. (“SS&D”). This document (the “ADR Plan”) sets forth the procedures that will be followed by the TA in carrying out its dispute resolution obligations under the Order. Because of the TA’s unique role (*i.e.*, its duty to mediate disputes and recommend resolutions) and its obligation to comply with the Order’s stringent time schedule, the TA will employ procedures that are informed by, but do not mirror, extant ADR procedures utilized by other ADR bodies and institutions.

The TA may utilize both SS&D and non-SS&D mediators (“TA Mediators”).<sup>2</sup>

Parties may also agree to submit any dispute to non-binding arbitration, at their own expense, provided that all Planning Funding Agreements and Frequency Reconfiguration Agreements shall be subject to the approval of the TA. TA Mediators (and other ADR entities) shall apply the substantive guidance provided by the Order and by TA policies issued pursuant thereto (hereinafter, “TA Policies”).

## 2. TA JURISDICTION

One of the TA’s primary responsibilities is to assist incumbent licensees and Nextel Communications, Inc. (“Sprint Nextel”) in reaching voluntary Planning Funding Agreements and Frequency Reconfiguration Agreements and, in cases where a voluntary agreement is not forthcoming, to recommend a proposed resolution (“Recommended Resolution” or “RR”) to the

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<sup>1</sup> Paragraph (“¶”) numbers refer to the numbered paragraphs of the FCC’s July 8, 2004 Report and Order. “SO” paragraph numbers (“SO ¶ \_\_\_”) refer to the numbered paragraphs of the FCC’s December 22, 2004 Supplemental Order and Order on Reconsideration. “MO&O” paragraph numbers (“MO&O ¶ \_\_\_”) refer to the FCC’s October 5, 2005 Memorandum Opinion and Order. Section (“§”) numbers refer to the FCC’s rules, 47 C.F.R. Part 1 *et seq.*

<sup>2</sup> The term “mediator” is used for convenience, although TA Mediators may issue recommended decisions (a function commonly associated with an “arbitrator”).

Public Safety and Homeland Security Bureau (“Bureau”). ¶ 201; MO&O ¶ 120; § 90.677(c)-(d). Once the Recommended Resolution and record (“Record”) are forwarded to the Commission, the role of TA Mediators in the *negotiation* of the Planning Funding Agreement or Frequency Reconfiguration Agreement will ordinarily come to an end. The parties, however, may seek expedited, non-binding arbitration of the issues in dispute by a non-TA arbitrator at their own expense. ¶ 194.

TA Mediators shall also be available to mediate certain other disputes (“Other Disputes”) between stakeholders that may arise during the course of reconfiguration. ¶¶ 27, 191, 196, 202; § 90.676(b)(5). At the request of either party, a TA Mediator shall mediate disputes between a licensee and Sprint Nextel concerning the *implementation* of their Planning Funding Agreement or Frequency Reconfiguration Agreement, including payment disputes, until such time as the licensee’s reconfiguration is complete. ¶¶ 27, 191; § 90.676(b)(5).

Similarly, if a public safety licensee determines, upon receipt of the report by CMRS carriers contemplated by the Commission’s interim interference mitigation requirements, that it expects serious system degradation, the public safety licensee may request a TA Mediator to facilitate mandatory mediation between the parties to obtain relief. SO ¶ 42.

The TA may also facilitate a channel distribution agreement between Southern LINC and Sprint Nextel. ¶ 168. Because Southern LINC and Sprint Nextel appear to have reached a final agreement, subject to the Commission’s approval, the TA does not anticipate any involvement with respect to this agreement. In the event that the Commission does not approve the channel distribution agreement and the parties are unable to negotiate a revised agreement, a TA Mediator shall mediate the negotiation of a final agreement.

The TA may, in its discretion and at the request of all of the parties, direct a TA Mediator to mediate disputes other than those set forth above that arise during the course of reconfiguring the 800 MHz band and clearing the 1.9 GHz band, or refer the parties to other alternative dispute resolution fora.

TA Mediators shall not mediate disputes *involving* the TA, *e.g.*, challenges to TA Policies or the TA’s disapproval of a proposed Planning Funding Agreement or Frequency Reconfiguration Agreement. Such policies and decisions are subject to review by the Commission under the Order and the Commission’s Rules of Practice and Procedure. 47 C.F.R. §§ 1.1 *et seq.* TA Mediators, however, shall be available until thirty working days after the end of the mandatory negotiation period to assist the parties in negotiating a revised Planning Funding Agreement or Frequency Reconfiguration Agreement to replace an agreement that has been disapproved by the TA, unless the parties seek review of the TA’s decision by the Commission.

### **3. PURPOSE OF ADR PLAN**

The purpose of mediation, as outlined in this ADR Plan, is to facilitate – to the maximum extent possible – the resolution of disputes between 800 MHz stakeholders by the parties themselves. Mediation is a means to an end, not an end in and of itself. TA Mediators will therefore administer the mediation process set forth in this ADR Plan in a flexible, but fair, manner, giving

due regard to the interests of the parties in achieving a mutually satisfactory resolution of the issues in dispute.

#### **4. STAFFING**

The TA General Counsel shall be responsible for managing the availability, training and assignment of a sufficient number of TA Mediators (both SS&D and non-SS&D) to mediate disputes involving 800 MHz stakeholders. All TA Mediators shall receive instruction regarding, *inter alia*, the principles governing reconfiguration (including the Order and TA Policies), technical and economic issues that may arise during the negotiation and implementation of Planning Funding Agreements and Frequency Reconfiguration Agreements, and other anticipated disputes involving 800 MHz stakeholders.

#### **5. CONFLICTS**

TA Mediators shall at all times abide by the Rules of Professional Conduct of the District of Columbia Bar and, in the case of TA Mediators who are not members of the District of Columbia Bar, the Rules of Professional Conduct or Code of Professional Responsibility of the jurisdiction in which they principally practice. In the event that two jurisdictions' rules permit differing results, the TA Mediator shall abide by the stricter rule, *i.e.*, the rule that imposes a higher duty or obligation on the TA Mediator. Insofar as non-lawyers may serve as TA Mediators or advisors to TA Mediators, they shall analyze and resolve conflicts in the same manner as if they were lawyers subject to the Rules of Professional Conduct of the District of Columbia Bar.

SS&D shall comply with the TA's Independence Management Plan and shall not represent Sprint Nextel, other licensees or other stakeholders in the negotiation of Planning Funding Agreements or Frequency Reconfiguration Agreements or the resolution of reconfiguration disputes. Non-SS&D TA Mediators shall be subject to the same restrictions applicable to SS&D and SS&D TA Mediators.

Representatives, principals, and employees of Deloitte Consulting LLP and Baseline Telecom, Inc. shall not serve as TA Mediators. Representatives, principals, and employees of Deloitte Consulting LLP and Baseline Telecom, Inc. may, in the discretion of the Chief Mediator, participate in Commission or other briefings conducted by the Chief Mediator.

#### **6. RECORDS AND CONFIDENTIALITY**

The TA shall maintain a docketing system that tracks, *inter alia*, the voluntary negotiation period, mandatory negotiation period, and the mediation and/or recommended resolution period described below. The TA docketing system shall serve as a repository for all documents required to be filed by the parties (as prescribed by the TA other than for purposes of TA mediation) and all final Planning Funding Agreements and Frequency Reconfiguration Agreements.

SS&D shall maintain a separate docketing system that tracks matters referred to TA Mediators. The TA Mediators' docketing system shall serve as the repository for all documents required to be included in the Record, as set forth below. All such documents shall be treated as confidential

by the TA and TA Mediators and shall be disclosed by the TA and TA Mediators only in accordance with the Order (¶ 201; § 90.677), the TA's Confidentiality Policy, and any protective order that may be issued by the Commission.<sup>3</sup> See also ¶ 203 (encouraging the TA to exercise discretion in disclosing security-sensitive information). A TA Mediator's notes and working papers shall be maintained separately, deemed pre-decisional work-product, and shall not be part of the Record.

Upon the involvement of a TA Mediator in the mediation of a dispute, the parties to the dispute shall be required to execute an agreement (in the form set forth on the TA website): (a) waiving their rights under the Uniform Mediation Act, similar legislation or common law to prevent the disclosure to the Commission of mediation communications (*i.e.*, oral or written statements made, and other information disclosed, during the mediation process); and (b) agreeing not to call a TA Mediator as a witness or to subpoena a TA Mediator's records in any litigation, including administrative proceedings before the Commission. This agreement will permit the TA to comply with its obligation to submit the Record of unresolved mediations and a Recommended Resolution of the issues in dispute to the Commission for *de novo* review and promote open and candid communications between the parties and TA Mediators.

TA Mediators may initiate or receive *ex parte* communications to explore the parties' positions. No information obtained from an *ex parte* communication shall be relied upon in recommending a resolution to the Commission or made part of the Record unless timely disclosed to the other party. With the approval of the Chief Mediator, TA Mediators may consult with other components of the TA to the extent necessary to ensure that the TA Mediators consider all relevant TA Policies and information. Such policies and information shall be made part of the Record to the extent relied upon by a TA Mediator in a Recommended Resolution.

## **7. COSTS AND EXPENSES**

In carrying out their responsibilities under this ADR Plan, TA Mediators shall employ efficient and cost-effective procedures.

The reasonable, prudent and necessary costs and expenses incurred by licensees in (a) the negotiation of Planning Funding Agreements and Frequency Reconfiguration Agreements during Stage One, Stage Two and Stage Three, as described below, and (b) the mediation of disputes involving the implementation of Planning Funding Agreements and Frequency Reconfiguration Agreements shall be reimbursable. A licensee requesting reimbursement of "transactional" costs and expenses in excess of two percent of the "hard" costs of relocation shall be required to meet a high burden of justification. SO ¶ 70.

The reasonable, prudent and necessary costs and expenses of mediation incurred by a public safety licensee in cases where the licensee determines that it expects serious system degradation from CMRS carriers under the Commission's interim interference mitigation requirements shall be reimbursable. The reasonable, prudent and necessary costs and expenses incurred by

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<sup>3</sup> See *Public Notice*, "Wireless Telecommunications Bureau Announces Procedures for *De Novo* Review in the 800 MHz Public Safety Proceeding," 21 FCC Rcd 758, 759 (2006) ("the TA may in its discretion designate portions of the record for which confidential treatment is sought pursuant to Section 0.459 of the Commission's rules").

Southern LINC in the mediation of a channel distribution agreement with Sprint Nextel, if such mediation becomes necessary, shall also be reimbursable.

The reasonable, prudent and necessary costs and expenses incurred by parties in the mediation of disputes, other than those set forth in the preceding two paragraphs, shall be reimbursable in the discretion of the TA.

All requests for reimbursement of costs and expenses shall comply with the relevant provisions of Section VI, “Payment Process,” and Section VII, “Funding Guidelines,” of the TA’s 800 MHz Band Reconfiguration Handbook.

The costs and expenses incurred by parties in expedited, non-binding arbitration and in seeking Commission resolution of disputes involving the negotiation and implementation of Planning Funding Agreements and Frequency Reconfiguration Agreements and Other Disputes shall not be reimbursable.

## **8. MEDIATION OF PLANNING FUNDING AGREEMENTS AND FREQUENCY RECONFIGURATION AGREEMENTS**

### **A. Overview**

The Order provides for a three-stage process for the negotiation of Frequency Reconfiguration Agreements.

The first stage is a three-month “voluntary negotiation” period (“Stage One”), during which the parties may negotiate any mutually agreeable Frequency Reconfiguration Agreement. § 90.677(b). All such agreements are subject to the approval of the TA. During Stage One, the TA shall, upon request of either party, provide assistance in communicating with the other party and with the transmission of documents and other information between the parties.<sup>4</sup> The TA may, in its discretion, direct a TA Mediator to mediate negotiations between the parties during Stage One if both parties request mediation.

If voluntary negotiations do not yield a Frequency Reconfiguration Agreement, there shall be a second stage consisting of a three-month “mandatory negotiation” period (“Stage Two”), during which the parties shall be required to negotiate in good faith. Good faith requires, *inter alia*, that: (i) Sprint Nextel make a *bona fide* offer to relocate the incumbent to comparable facilities; (ii) the parties take reasonable steps to determine the actual costs of relocation; (iii) the parties do not unreasonably withhold information, essential to the accurate estimation of relocation costs and procedures, requested by the other party; (iv) the parties attend any mandatory settlement conferences scheduled by a TA Mediator; and (v) the parties make counter-offers to reasonable offers, rather than refusing offers outright, or justify why an offer has been rejected. ¶ 201; SO ¶ 73 & n.181; § 90.677(c). The TA may, in its discretion, direct a TA Mediator to mediate negotiations between the parties during Stage Two if: (i) either party requests mediation; (ii) the

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<sup>4</sup> The Order permits either party to “elect to communicate with the other party through the [TA].” ¶ 201; § 90.677(b). In such instances, the TA will serve as a “conduit” for the exchange of information, rather than as a mediator.



parties fail to negotiate a Planning Funding Agreement within sixty days of the receipt by Sprint Nextel of a Request for Planning Funding from the TA; or (iii) the TA concludes that the parties are otherwise unlikely to negotiate a Frequency Reconfiguration Agreement by the end of the mandatory negotiation period. The TA Mediator's authority to require the parties to participate in scheduled mediation conferences is not conditioned upon a party's request for mediation.

If mandatory negotiations do not yield a Frequency Reconfiguration Agreement, there shall be a third stage during which mediation shall be conducted by a TA Mediator and the parties shall be required to identify in writing the issues in dispute and their positions with respect to those issues ("Stage Three"). § 90.677(d). During Stage Three, the parties remain obligated to negotiate in good faith. A party's failure to participate in mediation or to comply with the orders of a TA Mediator may be deemed a failure to negotiate in good faith.<sup>5</sup> If mediation does not result in a Frequency Reconfiguration Agreement within thirty working days,<sup>6</sup> the TA Mediator shall promptly forward the Record and Recommended Resolution to the Commission within ten days of the close of the mediation period.<sup>7</sup>

The parties may agree to expedited, non-binding arbitration at their own expense at any time; provided, however, that any Frequency Reconfiguration Agreement shall be subject to the approval of the TA.

#### **B. Stage One – Voluntary Negotiation Period**

Prior to the commencement of Stage One, the TA shall advise Sprint Nextel and the licensee:

- (1) Of the relevant start date of reconfiguration ("Start Date") and the time periods for the negotiation of a Frequency Reconfiguration Agreement;
- (2) Of the types of information that the licensee is required to provide Sprint Nextel;
- (3) That the TA, upon the request of either party, shall provide assistance in communicating with the other party and with the transmission of documents and other information between the parties;
- (4) That any Frequency Reconfiguration Agreement negotiated by the parties shall be subject to the approval of the TA; and
- (5) That the TA, in its discretion, may direct a TA Mediator to mediate negotiations between the parties if both parties request mediation. The parties may request

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<sup>5</sup> See *Public Notice*, "Wireless Telecommunications Bureau Reminds 800 MHz 'Wave One' Channel 1-120 Licensees of Band Reconfiguration Negotiation and Mediation Obligations," 20 FCC Rcd 20561 (2005); *Public Notice*, "Reminder to 800 MHz 'Wave Three' Channel 1-120 Licensees of Their Band Reconfiguration Negotiation and Mediation Obligations," 21 FCC Rcd 7122 (2006).

<sup>6</sup> As used in this ADR Plan, "working days" mean days other than Saturdays, Sundays and officially recognized Federal legal holidays.

<sup>7</sup> See *Public Notice*, "Wireless Telecommunications Bureau Announces Procedures for *De Novo* Review in the 800 MHz Public Safety Proceeding," 21 FCC Rcd at 758-59 (2006).

mediation by filing a Request for Mediation (“RFM”) in the form set forth on the TA website. If the TA directs a TA Mediator to mediate negotiations, the TA Mediator shall schedule a telephone conference during which the TA Mediator and the parties may, *inter alia*, identify the issues in dispute, agree upon a schedule for the exchange of information, and determine what further mediation steps, if any, may assist the parties in reaching a voluntary agreement, including further mediation sessions (by teleconference or in person).

- (6) At the request of either party or upon his or her own initiative, the TA Mediator shall issue such orders as the TA Mediator deems appropriate to the orderly conduct of the mediation.

### **C. Stage Two – Mandatory Negotiation Period**

If the parties have not negotiated a Frequency Reconfiguration Agreement within three months of the Start Date, the parties shall enter into mandatory negotiations. The TA shall advise the parties:

- (1) Of the time periods for the negotiation of a Frequency Reconfiguration Agreement;
- (2) Of their obligation to negotiate in the utmost good faith;
- (3) That the TA, upon the request of either party, shall provide assistance in communicating with the other party and with the transmission of documents and other information between the parties;
- (4) That, if any reasonable offer is made during Stage Two, the other party is required to make a counter-offer, and that failure to make such a counter-offer or to justify why an offer has been rejected may be deemed a violation of the duty to negotiate in good faith;
- (5) That any Frequency Reconfiguration Agreement negotiated by the parties shall be subject to the approval of the TA; and
- (6) That the TA, in its discretion, may direct a TA Mediator to mediate negotiations between the parties if (i) either party requests mediation or (ii) the TA concludes that the parties are otherwise unlikely to negotiate a Frequency Reconfiguration Agreement by the end of Stage Two. Parties may request mediation by filing an RFM in the form set forth on the TA website.
  - (a) If the TA, either at the request of one of the parties or on its own motion, directs a TA Mediator to mediate negotiations, the TA Mediator shall schedule a telephone conference during which the TA Mediator and the parties may, *inter alia*, identify the issues in dispute, agree upon a schedule for the exchange of information, and determine what further mediation steps, if any, may assist the parties in reaching a voluntary

agreement, including the preparation of a Request for Planning Funding and/or written reconfiguration cost estimate by the licensee, a written response by Sprint Nextel, and further mediation sessions (by teleconference or in person). During Stage Two, TA Mediators shall give preference to informal mediation over the more formal procedures set forth in paragraphs 8.C(6)(c)-(k), below.

- (b) At the request of either party or upon his or her own initiative, the TA Mediator shall issue such orders as the TA Mediator deems appropriate to the orderly conduct of the mediation.
- (c) The TA Mediator may, in his or her discretion, direct the parties to file sequentially with the TA Mediator and serve each other with Proposed Resolution Memoranda (“PRMs”), attested to by the parties, pursuant to a schedule prescribed by the TA Mediator.
- (d) The PRMs shall include:
  - (i) A summary of the party’s most recent offer or counter-offer;
  - (ii) An identification of any information requested by the party but withheld by the other party, including arguments whether such information is essential and has been unreasonably withheld;
  - (iii) A discussion of any allegation of breach of the duty to negotiate in good faith not based upon the withholding of information;
  - (iv) A discussion of each issue in dispute, with reference to supporting documents or other exhibits contained in an Appendix to the PRM, and the party’s proposed resolution of each issue; and
  - (v) An Appendix containing an index and consecutively paginated copies of all documents and other exhibits the party deems relevant to resolution of the disputed issues, provided that a party need not reproduce material contained in the other party’s Appendix. (A party’s PRM may cite to material contained in the other party’s Appendix.)
- (e) Unless otherwise directed by the TA Mediator, the service and filing of PRMs shall be performed electronically by submission in “PDF” format. If a licensee lacks the capacity to serve and file its PRM in “PDF” format, the licensee shall transmit its PRM in “read only” Word or Word Perfect format. The Appendix shall be filed and served in “PDF” format or by facsimile. In the rare case in which a party’s Appendix is of such length that the use of “PDF” format or facsimile is impracticable, the party shall file and serve its Appendix by overnight delivery. All submissions by the

parties shall be in the form and contain the information set forth in the Annex to this ADR Plan.

- (f) Upon receipt of the PRMs, the TA Mediator may schedule such in-person or telephonic conferences (with one or both of the parties) as deemed necessary to understand the parties' positions, mediate an agreement, hear argument, or request further information from the parties. Absent extraordinary circumstances, there shall not be an oral evidentiary hearing. Upon a finding of extraordinary circumstances, the TA Mediator may conduct an oral evidentiary hearing in which testimony shall be given on the record. Such hearing shall be transcribed unless otherwise directed by the TA Mediator.
- (g) If the parties have not negotiated a Frequency Reconfiguration Agreement within thirty working days of the date on which the TA Mediator has received a PRM from one party and a responsive PRM from the other party, the TA Mediator shall compile the Record, prepare a Recommended Resolution of the issues in dispute, and electronically forward the RR to the parties.
- (h) The RR shall include, *inter alia*:
  - (i) A Recommended Resolution of each factual issue in dispute that the TA Mediator deems relevant to the merits of the reconfiguration dispute, including allegations of a breach of the duty to negotiate in good faith, and a statement of reasons for each recommendation. Recommendations with respect to disputed facts shall be based solely upon the matters in the Record, as described in paragraph 8.C(6)(j), below. A Recommended Resolution may include alternative recommendations or a recommendation that further proceedings be conducted with respect to particular issues.
  - (ii) A Recommended Resolution of each legal or policy issue in dispute. Recommendations with respect to disputed legal or policy issues shall be based on the Order, TA Policies issued pursuant thereto, and relevant Commission precedent. In cases in which disputed legal and policy issues are not addressed by the Order, TA Policies or Commission precedent, the RR shall identify these issues for decision by the Commission.
- (i) The mediation proceeding shall not be governed by formal rules of evidence. The TA Mediator shall apply the following evidentiary standards in preparing the RR:
  - (i) Sprint Nextel shall bear the burden of proof as to the comparability of facilities.

- (ii) The licensee shall bear the burden of proof as to the cost of relocation.
  - (iii) The preponderance of the evidence test shall be applied in recommending the resolution of disputed facts.
- (j) The Record shall consist of:
  - (i) The parties' PRMs (including the reply, if any) and any supplements or amendments thereto;
  - (ii) Any stipulations entered into by the parties;
  - (iii) The RR and all notices or orders issued by the TA Mediator;
  - (iv) TA Policies that are referenced by the TA Mediator in the RR;
  - (v) Written communications and other information relied upon by the TA Mediator in the RR or otherwise determined by the TA Mediator to be appropriate for inclusion in the Record; and
  - (vi) Copies of proposed replies or amendments to the parties' PRMs or Appendices that the TA Mediator did not permit or consider in preparing the RR.
- (k) If the parties have not negotiated a Frequency Reconfiguration Agreement within thirty days of the date on which the RR was forwarded to the parties, the TA Mediator shall, within ten days: (i) forward the Record and RR to the Public Safety and Homeland Security Bureau; (ii) notify the parties that the Record and RR have been so forwarded; and (iii) inform the parties of the date, ten working days after such notification, by which each party may file a Statement of Position with the Public Safety and Homeland Security Bureau regarding the issues in dispute. The parties are encouraged to continue negotiating after the Record and RR have been submitted to the Bureau.
- (l) During the thirty day period following the date on which the RR was forwarded to the parties, the parties may agree to expedited, non-binding arbitration in a non-TA ADR forum and shall advise the TA Mediator of their agreement to do so. Such arbitration shall be conducted at their expense and shall be completed within thirty days of the date on which the RR was forwarded to the parties.
- (m) If the parties reach agreement as to all of the terms and conditions of a Frequency Reconfiguration Agreement through non-binding arbitration, by accepting the RR or otherwise, they shall provide a copy of such agreement to the TA. Any such agreement shall be subject to the approval of the TA.

#### **D. Stage Three – Mediation and/or Recommended Resolution Period**

If the parties have not negotiated a Frequency Reconfiguration Agreement (or a revised Frequency Reconfiguration Agreement if a previously negotiated Frequency Reconfiguration Agreement has been disapproved by the TA and the parties have not sought review of the TA's decision by the Commission) within six months of the Start Date and a TA Mediator has not forwarded to the Commission a Recommended Resolution of the issues in dispute, the parties shall enter into mediation. Stage Three shall be conducted as follows:

- (1) The TA shall promptly advise the parties that a TA Mediator has been assigned to mediate the negotiation of a Frequency Reconfiguration Agreement. No later than five working days after the commencement of Stage Three, *i.e.*, six months and five working days following the Start Date, the TA Mediator shall conduct a telephone conference with the parties, during which the TA Mediator and the parties may, *inter alia*, identify the issues in dispute, agree upon a schedule for the exchange of information, and determine what further mediation steps, if any, may assist the parties in reaching a voluntary agreement, including further mediation sessions (by teleconference or in person).
- (2) At the request of either party or upon his or her own initiative, the TA Mediator shall issue such orders as the TA Mediator deems appropriate to the orderly conduct of the mediation.
- (3) The TA Mediator may, in his or her discretion, direct the parties to file sequentially with the TA Mediator and serve each other with PRMs, attested to by the parties, pursuant to a schedule prescribed by the TA Mediator.
- (4) The PRMs shall include:
  - (a) A summary of the party's most recent offer or counter-offer;
  - (b) An identification of any information requested by the party but withheld by the other party, including arguments whether such information (i) is essential and (ii) has been unreasonably withheld;
  - (c) A discussion of any allegation of breach of the duty to negotiate in good faith not based upon the withholding of information;
  - (d) A discussion of each issue in dispute, with reference to supporting documents or other exhibits contained in an Appendix to the PRM, and the party's proposed resolution of each issue; and
  - (e) An Appendix containing an index and consecutively paginated copies of all documents and other exhibits the party deems relevant to resolution of the disputed issues, provided that a party need not reproduce material contained in the other party's Appendix. (A party's PRM may cite to material contained in the other party's Appendix.)

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- (5) Unless otherwise directed by the TA Mediator, the service and filing of PRMs shall be performed electronically by submission in “PDF” format. If a licensee lacks the capacity to serve and file its PRM in “PDF” format, the licensee shall transmit its PRM in “read only” Word or Word Perfect format. The Appendix shall be filed and served in “PDF” format or by facsimile. In the rare case in which a party’s Appendix is of such length that the use of “PDF” format or facsimile is impracticable, the party shall file and serve its Appendix by overnight delivery. All submissions by the parties shall be in the form and contain the information set forth in the Annex to this ADR Plan.
- (6) Upon receipt of the PRMs, the TA Mediator may schedule such in-person or telephonic conferences (with one or both of the parties) as deemed necessary to understand the parties’ positions, mediate an agreement, hear argument, or request further information from the parties. Absent extraordinary circumstances, there shall not be an oral evidentiary hearing. Upon a finding of extraordinary circumstances, the TA Mediator may conduct an oral evidentiary hearing in which testimony shall be given on the record. Such hearing shall be transcribed unless otherwise directed by the TA Mediator.
- (7) If the parties have not negotiated a Frequency Reconfiguration Agreement within thirty working days of the commencement of Stage Three, *i.e.*, six months and thirty days working days following the Start Date, the TA Mediator shall promptly compile the Record and prepare a Recommended Resolution of the issues in dispute.
- (8) The RR shall include, *inter alia*:
- (a) A Recommended Resolution of each factual issue in dispute that the TA Mediator deems relevant to the merits of the reconfiguration dispute, including allegations of a breach of the duty to negotiate in good faith, and a statement of reasons for each recommendation. Recommendations with respect to disputed facts shall be based solely upon the matters in the Record, as described in paragraph 8.D(10), below. A Recommended Resolution may include alternative recommendations or a recommendation that further proceedings be conducted with respect to particular issues.
  - (b) A Recommended Resolution of each legal or policy issue in dispute. Recommendations with respect to disputed legal or policy issues shall be based on the Order, TA Policies issued pursuant thereto, and relevant Commission precedent. In cases in which disputed legal and policy issues are not addressed by the Order, TA Policies or Commission precedent, the RR shall identify these issues for decision by the Commission.
- (9) The mediation proceeding shall not be governed by formal rules of evidence. The TA Mediator shall apply the following evidentiary standards in preparing the RR:



- (a) Sprint Nextel shall bear the burden of proof as to the comparability of facilities.
  - (b) The licensee shall bear the burden of proof as to the cost of relocation.
  - (c) The preponderance of the evidence test shall be applied in recommending the resolution of disputed facts.
- (10) The Record shall consist of:
  - (a) The parties' PRMs (including the reply, if any) and any supplements or amendments thereto;
  - (b) Any stipulations entered into by the parties;
  - (c) The RR and all notices or orders issued by the TA Mediator;
  - (d) TA Policies that are referenced by the TA Mediator in the RR;
  - (e) Written communications and other information relied upon by the TA Mediator in the RR or otherwise determined by the TA Mediator to be appropriate for inclusion in the Record; and
  - (f) Copies of proposed replies or amendments to the parties' PRMs or Appendices that the TA Mediator did not permit or consider in preparing the RR.
- (11) If the parties have not negotiated a Frequency Reconfiguration Agreement within thirty working days of the commencement of Stage Three, *i.e.*, six months and thirty working days following the Start Date, the TA Mediator shall, within ten days: (a) forward the Record and RR to the Public Safety and Homeland Security Bureau; (b) electronically serve the parties with the RR; and (c) inform the parties of the date, ten working days after serving the parties, by which each party may file a Statement of Position with the Public Safety and Homeland Security Bureau regarding the issues in dispute. The parties are encouraged to continue negotiating after the Record and RR have been submitted to the Bureau.
- (12) The parties may agree to expedited, non-binding arbitration in a non-TA ADR forum and shall advise the TA of their agreement to do so. Such arbitration shall be conducted at their expense and shall be completed within thirty days of the date on which the Record and RR are forwarded to the Bureau.
- (13) If the parties reach agreement as to all of the terms and conditions of a Frequency Reconfiguration Agreement through non-binding arbitration, by accepting the RR or otherwise, they shall provide a copy of such agreement to the TA. Any such agreement shall be subject to the approval of the TA.



**E. Special Procedures Applicable to Mediations Involving Licensees Engaged in Planning as of September 11, 2007**

- (1) The FCC has adopted a Public Notice<sup>8</sup> (the “Public Notice”) that applies to mediations involving:
  - (a) NPSPAC licensees that, as of September 11, 2007, were in the process of negotiating or had negotiated a Planning Funding Agreement with Sprint Nextel;
  - (b) NPSPAC licensees that, as of September 11, 2007, were engaged in reconfiguration planning without having negotiated a Planning Funding Agreement with Sprint Nextel; and
  - (c) Licensees that are reconfiguring Expansion Band frequencies in Stage 2 of the 800 MHz reconfiguration that, as of September 11, 2007, were engaged in reconfiguration planning.

Wave 4, Stage 2 licensees that have not received Frequency Proposal Reports from the TA are not covered by the special procedures set forth in paragraphs 8.E(2) through 8.E(4).
- (2) The special procedures set forth in paragraphs 8.E(3) and 8.E(4) apply to all mediations specified in paragraph 8.E(1), unless:
  - (a) The licensee, pursuant to the Public Notice, seeks additional time from the Public Safety and Homeland Security Bureau to complete planning; and
  - (b) The Public Safety and Homeland Security Bureau notifies the licensee, in writing, that additional time has been granted.
- (3) The TA Mediator shall advise the parties to mediations to which the Public Notice applies:
  - (a) Of the date on which the licensee must complete planning and submit a cost estimate to Sprint Nextel in accordance with the Public Notice;
  - (b) That the parties will have thirty days from the date on which the licensee submits a complete cost estimate to Sprint Nextel to negotiate a Frequency Reconfiguration Agreement;
  - (c) That, during the thirty-day negotiation period, the TA Mediator shall monitor the negotiations, but may commence mediation if the TA Mediator determines that the parties are not negotiating in good faith or are unlikely to reach agreement without the involvement of the mediator;

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<sup>8</sup> *Public Notice*, “FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding,” 22 FCC Rcd 17227 (2007).

- (d) That, if the parties are unable to reach agreement by the thirtieth day of the negotiation period (either with or without the involvement of the TA Mediator), the parties shall participate in a mediation for a twenty-day period;
  - (e) That, if the parties have not reached agreement by the tenth day of the mediation period, the TA Mediator may direct the parties to file PRMs not later than the twentieth day of the mediation period;
  - (f) That the TA shall refer disputed issues to the Public Safety and Homeland Security Bureau within ten days of the end of the mediation period; and
  - (g) That any agreement negotiated by the parties shall be subject to approval of the TA.
- (4) When a licensee subject to the Public Notice submits a cost estimate to Sprint Nextel:
- (a) At the time the licensee submits a cost estimate to Sprint Nextel, the licensee shall submit a copy, in electronic form, to the TA Mediator.
  - (b) The TA Mediator shall forward the licensee's cost estimate to the TA and request a report ("Cost Metrics Report") comparing the licensee's cost estimate to the TA's cost metrics.
  - (c) The TA Mediator and Sprint Nextel shall review the cost estimate for sufficiency.
    - (i) Within four working days of receiving the cost estimate, Sprint Nextel shall make an evaluation, and send a notification to the TA Mediator, whether the cost estimate is sufficiently complete to enable the parties to engage in good faith negotiations.
    - (ii) If, by no later than the end of the four working day review period specified in paragraph 8.E(4)(c)(i), Sprint Nextel notifies the TA Mediator that the cost estimate is sufficiently complete to enable the parties to engage in good faith negotiations or if Sprint Nextel sends no notification by the end of such review period, the TA Mediator shall notify the parties that the negotiation period has commenced.
    - (iii) If Sprint Nextel's evaluation is that the cost estimate is not sufficiently complete to enable the parties to engage in good faith negotiations, Sprint Nextel shall prepare a notification identifying the specific reasons why the cost estimate is incomplete (the "Notice") and shall send the Notice to the licensee and TA

Mediator no later than the end of the four working day review period specified in paragraph 8.E(4)(c)(i).

- (iv) Within one working day of the receipt of the Notice, the TA Mediator shall determine, in consultation with the Chief Mediator, whether Sprint Nextel's evaluation that the licensee's cost proposal is not sufficiently complete is reasonable. If the TA Mediator determines that Sprint Nextel's evaluation is not reasonable, the TA Mediator shall send the parties the notification specified in paragraph 8.E(4)(c)(ii). If the TA Mediator determines that Sprint Nextel's conclusion as to the incompleteness of the licensee's proposal is reasonable, the TA Mediator shall notify the parties:
  - (aa) That the licensee's cost estimate is not sufficiently complete to enable the parties to engage in good faith negotiations;
  - (bb) Of the reasons for the TA Mediator's determination; and
  - (cc) That the licensee shall resubmit a revised cost estimate as directed by the TA Mediator.
- (v) A copy of any notification by the TA Mediator pursuant to this paragraph 8.E(4)(c) and a copy of any Notice shall be included in the Record.
- (d) If the TA Mediator determines that the licensee's cost estimate is sufficiently complete to enable good faith negotiations, the TA Mediator shall issue a Notice of Commencement of Negotiations and forward the Cost Metrics Report to the parties. The parties shall have thirty days from the date on which the TA Mediator issues the Notice of Commencement of Negotiations to negotiate a Frequency Reconfiguration Agreement.
  - (i) During the thirty-day negotiation period, the TA Mediator shall monitor the progress of the negotiations. The parties shall participate in such joint or *ex parte* conferences as the TA Mediator deems appropriate.
  - (ii) During the thirty-day negotiation period, the TA Mediator may commence mediation, at any time, if the TA Mediator determines that the parties are not negotiating in good faith or are unlikely to reach agreement by the end of the negotiation period without the involvement of the TA Mediator.
- (e) If the parties are unable to reach agreement by the thirtieth day of the negotiation period (either with or without the involvement of the TA

Mediator), the parties shall participate in mediation for a twenty-day period.

- (f) Once the TA Mediator has commenced mediation:
  - (i) The TA Mediator shall conduct a joint conference to identify the issues in dispute, establish a schedule for the exchange of information, and determine what further mediation steps, if any, may assist the parties in reaching a voluntary agreement, including further mediation sessions (by teleconference or in person).
  - (ii) The TA Mediator shall issue such orders as the TA Mediator deems appropriate to the orderly conduct of the mediation.
- (g) If the parties have not reached agreement by the tenth day of the mediation period, the TA Mediator may direct the parties to file with the TA Mediator and serve each other with PRMs, attested to by the parties, pursuant to a schedule prescribed by the TA Mediator.
  - (i) All PRMs (including replies if permitted by the TA Mediator) shall be submitted no later than the twentieth day of the mediation period, except as otherwise specified by the TA Mediator, after consultation with the Chief Mediator.
  - (ii) The PRMs shall include:
    - (aa) A summary of the party's most recent offer or counter-offer;
    - (bb) An identification of any information requested by the party but withheld by the other party, including arguments whether such information (i) is essential and (ii) has been unreasonably withheld;
    - (cc) A discussion of any allegation of breach of the duty to negotiate in good faith not based upon the withholding of information;
    - (dd) A discussion of each issue in dispute, with reference to supporting documents or other exhibits contained in an Appendix to the PRM, and the party's proposed resolution of each issue; and
    - (ee) An Appendix containing an index and consecutively paginated copies of all documents and other exhibits the party deems relevant to resolution of the disputed issues, provided that a party need not reproduce material contained

in the other party's Appendix. (A party's PRM may cite to material contained in the other party's Appendix.)

- (iii) Unless otherwise directed by the TA Mediator, the service and filing of PRMs shall be performed electronically by submission in "PDF" format. If a licensee lacks the capacity to serve and file its PRM in "PDF" format, the licensee shall transmit its PRM in "read only" Word or Word Perfect format. The Appendix shall be filed and served in "PDF" format or by facsimile. In the rare case in which a party's Appendix is of such length that the use of "PDF" format or facsimile is impracticable, the party shall file and serve its Appendix by overnight delivery. All submissions by the parties shall be in the form and contain the information set forth in the Annex to this ADR Plan.
- (h) If the parties' dispute involves the costs of reconfiguration, the TA Mediator shall forward each party's final offer or counter-offer to the TA and request reports ("Final Cost Metrics Reports") comparing the parties' respective positions to the TA's cost metrics. The TA Mediator shall forward the Final Cost Metrics Reports to the parties. The parties shall have five days to comment on the Final Cost Metrics Reports. The parties' comments, which may not exceed ten double-spaced pages, shall be limited to the contents of the Final Cost Metrics Reports.
- (i) If the parties have not reached agreement by the twentieth day of the mediation period or, if Final Cost Metrics Reports are prepared, by the date on which the parties comment on the Final Cost Metrics Reports, the TA Mediator shall compile the Record and, unless the Public Safety and Homeland Security Bureau directs otherwise, prepare a Recommended Resolution of the issues in dispute.
- (j) The RR shall include, *inter alia*:
  - (i) A Recommended Resolution of each factual issue in dispute that the TA Mediator deems relevant to the merits of the reconfiguration dispute, including allegations of a breach of the duty to negotiate in good faith, and a statement of reasons for each recommendation. Recommendations with respect to disputed facts shall be based solely upon the matters in the Record. A Recommended Resolution may include alternative recommendations or a recommendation that further proceedings be conducted with respect to particular issues.
  - (ii) A Recommended Resolution of each legal or policy issue in dispute. Recommendations with respect to disputed legal or policy issues shall be based on the Order, TA Policies issued pursuant thereto, and relevant Commission precedent. In cases in which

disputed legal and policy issues are not addressed by the Order, TA Policies or Commission precedent, the RR shall identify these issues for decision by the Commission.

- (k) The mediation proceeding shall not be governed by formal rules of evidence. The TA Mediator shall apply the following evidentiary standards in preparing the RR:
  - (i) Sprint Nextel shall bear the burden of proof as to the comparability of facilities.
  - (ii) The licensee shall bear the burden of proof as to the cost of relocation.
  - (iii) The preponderance of the evidence test shall be applied in recommending the resolution of disputed facts.
- (l) The Record shall consist of:
  - (i) The parties' PRMs (including replies, if any) and any supplements or amendments thereto;
  - (ii) Any stipulations entered into by the parties;
  - (iii) Unless directed otherwise by the Public Safety and Homeland Security Bureau, the RR and all notices or orders issued by the TA Mediator;
  - (iv) TA Policies that are referenced by the TA Mediator in the RR;
  - (v) Written communications and other information relied upon by the TA Mediator in the RR or otherwise determined by the TA Mediator to be appropriate for inclusion in the Record, including any Cost Metrics Reports and Final Cost Metrics Reports; and
  - (vi) Copies of proposed replies or amendments to the parties' PRMs or Appendices that the TA Mediator did not permit or consider in preparing the RR.
- (m) Unless directed otherwise by the Public Safety and Homeland Security Bureau, if the parties have not reached agreement within thirty days of the commencement of the mediation period or, if Final Cost Metrics Reports are prepared, within ten days of the date on which the parties comment on the Final Cost Metrics Reports, the TA Mediator shall:
  - (i) Forward the Record and RR to the Public Safety and Homeland Security Bureau;

- (ii) Electronically serve the parties with the RR; and
- (iii) Inform the parties of the date, ten working days after serving the parties, by which each party may file a Statement of Position with the Public Safety and Homeland Security Bureau regarding the issues in dispute.
- (n) The parties are encouraged to continue negotiating after the Record and RR have been submitted to the Bureau.
- (o) If the parties reach agreement as to all of the terms and conditions of a Frequency Reconfiguration Agreement, by accepting the RR or otherwise, they shall provide a copy of such agreement to the TA. Any such agreement shall be subject to the approval of the TA.

**F. Special Procedures Applicable to Licensees in the United States-Canada Border Region**

- (1) The FCC has adopted a Second Report and Order (“Second Report”)<sup>9</sup> that applies to licensees located in the border region between the United States and Canada.
- (2) The special procedures set forth in paragraph 8.F(5) apply to all such licensees, as well as licensees adjacent to the United States-Canada border region that have not been previously assigned frequencies because of their proximity to the border region, that intend to negotiate Planning Funding Agreements with Sprint Nextel.
- (3) The special procedures set forth in paragraph 8.F(6) apply to all such licensees, as well as licensees adjacent to the United States-Canada border region that have not been previously assigned frequencies because of their proximity to the border region, that intend to negotiate Frequency Reconfiguration Agreements with Sprint Nextel, without regard to whether they previously negotiated a Planning Funding Agreement.
- (4) If Sprint Nextel and licensees to which the Second Report applies have not negotiated a Frequency Reconfiguration Agreement within 90 to 110 days, depending on the number of units in the licensee’s system,<sup>10</sup> of the date designated by the TA, the parties shall be referred to a TA Mediator; unless the licensee intends to negotiate a Planning Funding Agreement, in which case Sprint Nextel and the licensee shall be referred to a TA Mediator sixty days after the effective date of the Second Report.

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<sup>9</sup> See Improving Public Safety Communications in the 800 MHz Band, *Second Report and Order*, WT Docket No. 02-55, 23 FCC Rcd 7605 (2008).

<sup>10</sup> For licensees with up to 5,000 units, the period is 90 days; for licensees with 5001-10,000 units, the period is 100 days; and for licensees with more than 10,000 units, the period is 110 days.

- (5) If the licensee intends to negotiate a Planning Funding Agreement, the TA Mediator shall advise the parties that: they will have thirty days from the date on which the licensee submits a complete Request for Planning Funding (“RFPF”) to negotiate a Planning Funding Agreement; and, if the parties are unable to reach agreement by the thirtieth day of the negotiation period (either with or without the involvement of the TA Mediator), the parties shall participate in mediation for a twenty-day period.
  - (a) When a licensee submits an RFPF to Sprint Nextel, the provisions of paragraphs 8.E(4)(a)-(c) shall apply to the review of such RFPF; provided that all references in such paragraphs to the cost estimate shall be deemed to be references to the RFPF.
  - (b) If the TA Mediator determines that the licensee’s RFPF is sufficiently complete to enable good faith negotiations, the provisions of paragraphs 8.E(4)(d)-(o) shall apply to the negotiation and mediation of a Planning Funding Agreement; provided that all references in such paragraphs to a Frequency Reconfiguration Agreement shall be deemed to be references to a Planning Funding Agreement.
- (6) If the licensee intends to negotiate a Frequency Reconfiguration Agreement, the TA Mediator shall advise the parties that: they will have thirty days from the date on which the licensee submits a complete cost estimate to negotiate a Frequency Reconfiguration Agreement; and, if the parties are unable to reach agreement by the thirtieth day of the negotiation period (either with or without the involvement of the TA Mediator), the parties shall participate in mediation for a twenty-day period.
  - (a) When a licensee submits a cost estimate to Sprint Nextel, the provisions of paragraphs 8.E(4)(a)-(c) shall apply to the review of such cost estimate.
  - (b) If the TA Mediator determines that the licensee’s cost estimate is sufficiently complete to enable good faith negotiations, the provisions of paragraphs 8.E(4)(d)-(o) shall apply to the negotiation and mediation of a Frequency Reconfiguration Agreement.

**G. Special Procedures Applicable to Certain Licensees in Puerto Rico**

- (1) The FCC has adopted a Third Report and Order (“Third Report”)<sup>11</sup> that applies to certain licensees located in Puerto Rico. The procedures set forth in paragraphs 8.G(2)-(14) apply to all such licensees that intend to negotiate Frequency Reconfiguration Agreements with Sprint Nextel.

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<sup>11</sup> See Improving Public Safety Communications in the 800 MHz Band, *Third Report and Order and Third Further Notice of Proposed Rulemaking*, WT Docket No. 02-55, 25 FCC Rcd 4443 (2010).



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- (2) If Sprint Nextel and licensees to which the Third Report applies have not negotiated a Frequency Reconfiguration Agreement by September 20, 2010, the parties shall enter into mandatory negotiations. The TA shall advise the parties:
- (a) Of the time periods for the negotiation of a Frequency Reconfiguration Agreement;
  - (b) Of their obligation to negotiate in the utmost good faith;
  - (c) That the TA, upon the request of either party, shall provide assistance in communicating with the other party and with the transmission of documents and other information between the parties;
  - (d) That, if any reasonable offer is made during the mandatory negotiation period, the other party is required to make a counter-offer, and that failure to make such a counter-offer or to justify why an offer has been rejected may be deemed a violation of the duty to negotiate in good faith;
  - (e) That any Frequency Reconfiguration Agreement negotiated by the parties shall be subject to the approval of the TA; and
  - (f) That the TA, in its discretion, may direct a TA Mediator to mediate negotiations between the parties if (i) either party requests mediation or (ii) the TA concludes that the parties are otherwise unlikely to negotiate a Frequency Reconfiguration Agreement by the end of mandatory negotiation period. Parties may request mediation by filing an RFM in the form set forth on the TA website. If the TA concludes that mediation is appropriate, the procedures set forth in paragraphs 8.G(4)-(14) shall apply.
- (3) If Sprint Nextel and licensees to which the Third Report applies have not negotiated a Frequency Reconfiguration Agreement by October 20, 2010, a TA Mediator shall be assigned to monitor the parties' progress during the remainder of the mandatory negotiation period.
- (4) If Sprint Nextel and licensees to which the Third Report applies have not negotiated a Frequency Reconfiguration Agreement by December 20, 2010, the parties shall be referred to mediation before a TA Mediator. The mediation period shall commence on December 21, 2010 and shall continue for thirty working days.
- (5) The TA Mediator shall promptly conduct a joint conference to identify the issues in dispute, establish a schedule for the exchange of information, and determine what further mediation steps, if any, may assist the parties in reaching a voluntary agreement, including further mediation sessions (by teleconference or in person).
- (6) The TA Mediator shall issue such orders as the TA Mediator deems appropriate to the orderly conduct of the mediation.

- (7) If the parties have not reached agreement within twenty working days of the commencement of the mediation period, the TA Mediator may direct the parties to file with the TA Mediator and serve each other with PRMs, attested to by the parties, pursuant to a schedule prescribed by the TA Mediator.
- (a) All PRMs (including replies if permitted by the TA Mediator) shall be submitted no later than the thirtieth working day of the mediation period, except as otherwise specified by the TA Mediator after consultation with the Chief Mediator.
  - (b) The PRMs shall include:
    - (i) A summary of the party's most recent offer or counter-offer;
    - (ii) An identification of any information requested by the party but withheld by the other party, including arguments whether such information is essential and has been unreasonably withheld;
    - (iii) A discussion of any allegation of breach of the duty to negotiate in good faith not based upon the withholding of information;
    - (iv) A discussion of each issue in dispute, with reference to supporting documents or other exhibits contained in an Appendix to the PRM, and the party's proposed resolution of each issue; and
    - (v) An Appendix containing an index and consecutively paginated copies of all documents and other exhibits the party deems relevant to resolution of the disputed issues, provided that a party need not reproduce material contained in the other party's Appendix. (A party's PRM may cite to material contained in the other party's Appendix.)
  - (c) Unless otherwise directed by the TA Mediator, the service and filing of PRMs shall be performed electronically by submission in "PDF" format. If a licensee lacks the capacity to serve and file its PRM in "PDF" format, the licensee shall transmit its PRM in "read only" Word or Word Perfect format. The Appendix shall be filed and served in "PDF" format or by facsimile. In the rare case in which a party's Appendix is of such length that the use of "PDF" format or facsimile is impracticable, the party shall file and serve its Appendix by overnight delivery. All submissions by the parties shall be in the form and contain the information set forth in the Annex to this ADR Plan.
- (8) If the parties have not reached agreement by the thirtieth working day of the mediation period, the TA Mediator shall compile the Record and, unless the Public Safety and Homeland Security Bureau directs otherwise, prepare a Recommended Resolution of the issues in dispute.

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- (9) The RR shall include, *inter alia*:
- (a) A Recommended Resolution of each factual issue in dispute that the TA Mediator deems relevant to the merits of the reconfiguration dispute, including allegations of a breach of the duty to negotiate in good faith, and a statement of reasons for each recommendation. Recommendations with respect to disputed facts shall be based solely upon the matters in the Record. A Recommended Resolution may include alternative recommendations or a recommendation that further proceedings be conducted with respect to particular issues.
  - (b) A Recommended Resolution of each legal or policy issue in dispute. Recommendations with respect to disputed legal or policy issues shall be based on the Order, TA Policies issued pursuant thereto, and relevant Commission precedent. In cases in which disputed legal and policy issues are not addressed by the Order, TA Policies or Commission precedent, the RR shall identify these issues for decision by the Commission.
- (10) The mediation proceeding shall not be governed by formal rules of evidence. The TA Mediator shall apply the following evidentiary standards in preparing the RR:
- (a) Sprint Nextel shall bear the burden of proof as to the comparability of facilities.
  - (b) The licensee shall bear the burden of proof as to the cost of relocation.
  - (c) The preponderance of the evidence test shall be applied in recommending the resolution of disputed facts.
- (11) The Record shall consist of:
- (a) The parties' PRMs (including replies, if any) and any supplements or amendments thereto;
  - (b) Any stipulations entered into by the parties;
  - (c) Unless directed otherwise by the Public Safety and Homeland Security Bureau, the RR and all notices or orders issued by the TA Mediator;
  - (d) TA Policies that are referenced by the TA Mediator in the RR;
  - (e) Written communications and other information relied upon by the TA Mediator in the RR or otherwise determined by the TA Mediator to be appropriate for inclusion in the Record; and
  - (f) Copies of proposed replies or amendments to the parties' PRMs or Appendices that the TA Mediator did not permit or consider in preparing the RR.

- (12) Unless directed otherwise by the Public Safety and Homeland Security Bureau, if the parties have not reached agreement within ten days of the conclusion of the mediation period, the TA Mediator shall:
  - (a) Forward the Record and RR to the Public Safety and Homeland Security Bureau;
  - (b) Electronically serve the parties with the RR; and
  - (c) Inform the parties of the date, ten working days after serving the parties, by which each party may file a Statement of Position with the Public Safety and Homeland Security Bureau regarding the issues in dispute.
- (13) The parties are encouraged to continue negotiating after the Record and RR have been submitted to the Bureau.
- (14) If the parties reach agreement as to all of the terms and conditions of a Frequency Reconfiguration Agreement, by accepting the RR or otherwise, they shall provide a copy of such agreement to the TA. Any such agreement shall be subject to the approval of the TA.

**H. Special Procedures Applicable to Licensees in the Areas Adjacent to the United States-Mexico Border**

- (1) The FCC has adopted a Fifth Report and Order (“Fifth Report”)<sup>12</sup> that applies to licensees located within 110 km (68.35 miles) of the border between the United States and Mexico (“the Sharing Zone”) and licensees operating outside the Sharing Zone in the NPSPAC regions bordering Mexico (collectively “Mexico Border Licensees”).
- (2) The special procedures set forth in paragraphs 8.H(5) and 8.H(6) below apply to all Mexico Border Licensees that intend to negotiate Planning Funding Agreements or Planning Funding Agreement Amendments with Sprint Nextel.
- (3) The special procedures set forth in paragraphs 8.H(7) and 8.H(8) below apply to all Mexico Border Licensees that intend to negotiate Frequency Reconfiguration Agreements with Sprint Nextel, without regard to whether they previously negotiated a Planning Funding Agreement or a Planning Funding Agreement Amendment.
- (4) If Sprint Nextel and Mexico Border Licensees have not negotiated a Frequency Reconfiguration Agreement within 90 to 110 days, depending on the number of units in the licensee’s system,<sup>13</sup> of the planning period start date designated by the

<sup>12</sup> See Improving Public Safety Communications in the 800 MHz Band, *Fifth Report and Order*, WT Docket No. 02-55, 28 FCC Rcd 4085 (2013).

<sup>13</sup> For licensees with up to 5,000 units, the period is 90 days; for licensees with 5,001-10,000 units, the period is 100 days; and for licensees with more than 10,000 units, the period is 110 days.

TA,<sup>14</sup> the parties shall be referred to a TA Mediator; unless they intend to negotiate a Planning Funding Agreement or Planning Funding Agreement Amendment, in which case Sprint Nextel and the licensee shall be referred to a TA Mediator no later than August 23, 2013.

- (5) If the parties intend to negotiate a Planning Funding Agreement or Planning Funding Agreement Amendment, the TA Mediator shall advise the parties that: they will have thirty days from the date on which the licensee submits a complete Request for Planning Funding (“RFPF”) to negotiate a Planning Funding Agreement or a complete Change Notice to negotiate a Planning Funding Agreement Amendment (“PFA Change Notice”); and, if the parties are unable to reach agreement by the thirtieth day of the negotiation period (which shall be monitored by the TA Mediator), the parties shall participate in mediation for twenty working days.
- (6) When a licensee submits an RFPF or a PFA Change Notice to the TA, the following provisions shall apply to the review of such RFPF or PFA Change Notice:
  - (a) At the time the licensee submits an RFPF or a PFA Change Notice to the TA, the licensee shall submit a copy, in electronic form, to the TA Mediator.
  - (b) Upon receipt of the licensee’s RFPF or PFA Change Notice, the TA Mediator shall request from the TA a report (“PFA Cost Metrics Report”) comparing the licensee’s RFPF or PFA Change Notice to the TA’s Planning Funding Cost Metrics.
  - (c) The TA Mediator and Sprint Nextel shall review the RFPF or PFA Change Notice for sufficiency.
    - (i) Within four working days of receiving the RFPF or PFA Change Notice, Sprint Nextel shall make an evaluation, and send a notification to the TA Mediator, whether the RFPF or PFA Change Notice is sufficiently complete to enable the parties to engage in good faith negotiations.
    - (ii) If, by no later than the end of the four working day review period specified in paragraph 8.H(6)(c)(i), Sprint Nextel notifies the TA Mediator that the RFPF or PFA Change Notice is sufficiently complete to enable the parties to engage in good faith negotiations or if Sprint Nextel sends no notification by the end of such review

<sup>14</sup> If the TA has not designated replacement channels for a licensee by the planning period start date designated by the TA for licensees that do not intend to negotiate a Planning Funding Agreement or Planning Funding Agreement Amendment, the 90 to 110 day period will commence on the date the licensee receives its replacement channel assignments from the TA.

period, the TA Mediator shall notify the parties that the negotiation period has commenced.

- (iii) If Sprint Nextel's evaluation is that the RFPF or PFA Change Notice is not sufficiently complete to enable the parties to engage in good faith negotiations, Sprint Nextel shall prepare a notification identifying the specific reasons why the RFPF or PFA Change Notice is incomplete (the "Notice") and shall send the Notice to the licensee and TA Mediator no later than the end of the four working day review period specified in paragraph 8.H(6)(c)(i).
- (iv) Within one working day of the receipt of the Notice, the TA Mediator shall determine, in consultation with the Chief Mediator, whether Sprint Nextel's evaluation that the licensee's cost proposal is not sufficiently complete is reasonable. If the TA Mediator determines that Sprint Nextel's evaluation is not reasonable, the TA Mediator shall send the parties the notification specified in paragraph 8.H(6)(c)(ii). If the TA Mediator determines that Sprint Nextel's conclusion as to the incompleteness of the licensee's proposal is reasonable, the TA Mediator shall notify the parties:
  - (aa) That the licensee's RFPF or PFA Change Notice is not sufficiently complete to enable the parties to engage in good faith negotiations;
  - (bb) Of the reasons for the TA Mediator's determination; and
  - (cc) That the licensee shall resubmit a revised RFPF or PFA Change Notice as directed by the TA Mediator.
- (v) A copy of any notification by the TA Mediator pursuant to paragraph 8.H(6)(c) and a copy of any Notice shall be included in the Record.
- (d) If the TA Mediator determines that the licensee's RFPF or PFA Change Notice is sufficiently complete to enable good faith negotiations, the TA Mediator shall issue a Notice of Commencement of Negotiations and forward the PFA Cost Metrics Report to the parties. The parties shall have thirty days from the date on which the TA Mediator issues the Notice of Commencement of Negotiations to negotiate a Planning Funding Agreement or Planning Funding Agreement Amendment. During the thirty-day negotiation period, the TA Mediator shall monitor the progress of the negotiations. The parties shall participate in such joint or *ex parte* conferences as the TA Mediator deems appropriate.

- (e) If the parties are unable to reach agreement by the thirtieth day of the negotiation period, the parties shall participate in mediation for a twenty working day period.
- (f) Once the TA Mediator has commenced mediation:
  - (i) The TA Mediator shall conduct joint and *ex parte* conferences to identify the issues in dispute, establish a schedule for the exchange of information, and determine what further mediation steps, if any, may assist the parties in reaching a voluntary agreement, including further mediation sessions (by teleconference or in person).
  - (ii) The TA Mediator shall issue such orders as the TA Mediator deems appropriate to the orderly conduct of the mediation.
- (g) If the parties have not reached agreement by the tenth working day of the mediation period, the TA Mediator may direct the parties to file with the TA Mediator and serve each other with PRMs, attested to by the parties, pursuant to a schedule prescribed by the TA Mediator.
  - (i) All PRMs (including replies if permitted by the TA Mediator) shall be submitted no later than the twentieth working day of the mediation period, except as otherwise specified by the TA Mediator, after consultation with the Chief Mediator.
  - (ii) The PRMs shall include:
    - (aa) A summary of the party's most recent offer or counter-offer;
    - (bb) An identification of any information requested by the party but withheld by the other party, including arguments whether such information (i) is essential and (ii) has been unreasonably withheld;
    - (cc) A discussion of any allegation of breach of the duty to negotiate in good faith not based upon the withholding of information;
    - (dd) A discussion of each issue in dispute, with reference to supporting documents or other exhibits contained in an Appendix to the PRM, and the party's proposed resolution of each issue; and
    - (ee) An Appendix containing an index and consecutively paginated copies of all documents and other exhibits the party deems relevant to resolution of the disputed issues, provided that a party need not reproduce material contained



in the other party's Appendix. (A party's PRM may cite to material contained in the other party's Appendix.)

- (iii) Unless otherwise directed by the TA Mediator, the service and filing of PRMs shall be performed electronically by submission in "PDF" format. If a licensee lacks the capacity to serve and file its PRM in "PDF" format, the licensee shall transmit its PRM in "read only" Word or Word Perfect format. The Appendix shall be filed and served in "PDF" format or by facsimile. In the rare case in which a party's Appendix is of such length that the use of "PDF" format or facsimile is impracticable, the party shall file and serve its Appendix by overnight delivery. All submissions by the parties shall be in the form and contain the information set forth in the Annex to this ADR Plan.
- (h) If the parties' dispute involves the costs of planning, the TA Mediator shall forward each party's final offer or counter-offer to the TA and request reports ("Final PFA Cost Metrics Reports") comparing the parties' respective positions to the TA's Planning Funding Cost Metrics. The TA Mediator shall forward the Final PFA Cost Metrics Reports to the parties. The parties shall have five days to comment on the Final PFA Cost Metrics Reports. The parties' comments, which may not exceed ten double-spaced pages, shall be limited to the contents of the Final PFA Cost Metrics Reports.
- (i) If the parties have not reached agreement by the twentieth working day of the mediation period or, if Final PFA Cost Metrics Reports are prepared, by the date on which the parties comment on the Final PFA Cost Metrics Reports, the TA Mediator shall compile the Record and, unless the Public Safety and Homeland Security Bureau directs otherwise, prepare a Recommended Resolution of the issues in dispute.
- (j) The RR shall include, *inter alia*:
  - (i) A Recommended Resolution of each factual issue in dispute that the TA Mediator deems relevant to the merits of the reconfiguration dispute, including allegations of a breach of the duty to negotiate in good faith, and a statement of reasons for each recommendation. Recommendations with respect to disputed facts shall be based solely upon the matters in the Record. A Recommended Resolution may include alternative recommendations or a recommendation that further proceedings be conducted with respect to particular issues.
  - (ii) A Recommended Resolution of each legal or policy issue in dispute. Recommendations with respect to disputed legal or policy issues shall be based on the Order, TA Policies issued pursuant



thereto, and relevant Commission precedent. In cases in which disputed legal and policy issues are not addressed by the Order, TA Policies or Commission precedent, the RR shall identify these issues for decision by the Commission.

- (k) The mediation proceeding shall not be governed by formal rules of evidence. The TA Mediator shall apply the following evidentiary standards in preparing the RR:
  - (i) Sprint Nextel shall bear the burden of proof as to the comparability of facilities.
  - (ii) The licensee shall bear the burden of proof as to the cost of relocation.
  - (iii) The preponderance of the evidence test shall be applied in recommending the resolution of disputed facts.
- (l) The Record shall consist of:
  - (i) The parties' PRMs (including replies, if any) and any supplements or amendments thereto;
  - (ii) Any stipulations entered into by the parties;
  - (iii) Unless directed otherwise by the Public Safety and Homeland Security Bureau, the RR and all notices or orders issued by the TA Mediator;
  - (iv) TA Policies that are referenced by the TA Mediator in the RR;
  - (v) Written communications and other information relied upon by the TA Mediator in the RR or otherwise determined by the TA Mediator to be appropriate for inclusion in the Record, including any PFA Cost Metrics Reports and Final PFA Cost Metrics Reports; and
  - (vi) Copies of proposed replies or amendments to the parties' PRMs or Appendices that the TA Mediator did not permit or consider in preparing the RR.
- (m) Unless directed otherwise by the Public Safety and Homeland Security Bureau, if the parties have not reached agreement within ten days of the end of the mediation period or, if Final PFA Cost Metrics Reports are prepared, within ten days of the date on which the parties comment on the Final PFA Cost Metrics Reports, the TA Mediator shall:

- (i) Forward the Record and RR to the Public Safety and Homeland Security Bureau;
    - (ii) Electronically serve the parties with the RR; and
    - (iii) Inform the parties of the date, ten working days after serving the parties, by which each party may file a Statement of Position with the Public Safety and Homeland Security Bureau regarding the issues in dispute.
  - (n) The parties are encouraged to continue negotiating after the Record and RR have been submitted to the Bureau.
  - (o) If the parties reach agreement as to all of the terms and conditions of a Planning Funding Agreement or Planning Funding Agreement Amendment, by accepting the RR or otherwise, they shall provide a copy of such agreement to the TA. Any such agreement shall be subject to the approval of the TA.
- (7) If the parties intend to negotiate a Frequency Reconfiguration Agreement, the TA Mediator shall advise the parties that: they will have thirty days from the date on which the licensee submits a complete cost estimate to negotiate a Frequency Reconfiguration Agreement; and, if the parties are unable to reach agreement by the thirtieth day of the negotiation period (which shall be monitored by the TA Mediator), the parties shall participate in mediation for twenty working days.
- (8) When a licensee submits a cost estimate to Sprint Nextel, the following provisions shall apply to the review of such cost estimate:
- (a) At the time the licensee submits a cost estimate to Sprint Nextel, the licensee shall submit a copy, in electronic form, to the TA Mediator.
  - (b) The TA Mediator shall forward the licensee's cost estimate to the TA and request a report ("FRA Cost Metrics Report") comparing the licensee's cost estimate to the TA's Frequency Reconfiguration Agreement Cost Metrics.
  - (c) The TA Mediator and Sprint Nextel shall review the cost estimate for sufficiency.
    - (i) Within four working days of receiving the cost estimate, Sprint Nextel shall make an evaluation, and send a notification to the TA Mediator, whether the cost estimate is sufficiently complete to enable the parties to engage in good faith negotiations.
    - (ii) If, by no later than the end of the four working day review period specified in paragraph 8.H(8)(c)(i), Sprint Nextel notifies the TA Mediator that the cost estimate is sufficiently complete to enable

the parties to engage in good faith negotiations or if Sprint Nextel sends no notification by the end of such review period, the TA Mediator shall notify the parties that the negotiation period has commenced.

- (iii) If Sprint Nextel's evaluation is that the cost estimate is not sufficiently complete to enable the parties to engage in good faith negotiations, Sprint Nextel shall prepare a notification identifying the specific reasons why the cost estimate is incomplete (the "Notice") and shall send the Notice to the licensee and TA Mediator no later than the end of the four working day review period specified in paragraph 8.H(8)(c)(i).
- (iv) Within one working day of the receipt of the Notice, the TA Mediator shall determine, in consultation with the Chief Mediator, whether Sprint Nextel's evaluation that the licensee's cost proposal is not sufficiently complete is reasonable. If the TA Mediator determines that Sprint Nextel's evaluation is not reasonable, the TA Mediator shall send the parties the notification specified in paragraph 8.H(8)(c)(ii). If the TA Mediator determines that Sprint Nextel's conclusion as to the incompleteness of the licensee's proposal is reasonable, the TA Mediator shall notify the parties:
  - (aa) That the licensee's cost estimate is not sufficiently complete to enable the parties to engage in good faith negotiations;
  - (bb) Of the reasons for the TA Mediator's determination; and
  - (cc) That the licensee shall resubmit a revised cost estimate as directed by the TA Mediator.
- (v) A copy of any notification by the TA Mediator pursuant to paragraph 8.H(8)(c) and a copy of any Notice shall be included in the Record.
- (d) If the TA Mediator determines that the licensee's cost estimate is sufficiently complete to enable good faith negotiations, the TA Mediator shall issue a Notice of Commencement of Negotiations and forward the FRA Cost Metrics Report to the parties. The parties shall have thirty days from the date on which the TA Mediator issues the Notice of Commencement of Negotiations to negotiate a Frequency Reconfiguration Agreement. During the thirty-day negotiation period, the TA Mediator shall monitor the progress of the negotiations. The parties shall participate in such joint or *ex parte* conferences as the TA Mediator deems appropriate.

- (e) If the parties are unable to reach agreement by the thirtieth day of the negotiation period, the parties shall participate in mediation for a twenty working day period.
- (f) Once the TA Mediator has commenced mediation:
  - (i) The TA Mediator shall conduct joint and *ex parte* conferences to identify the issues in dispute, establish a schedule for the exchange of information, and determine what further mediation steps, if any, may assist the parties in reaching a voluntary agreement, including further mediation sessions (by teleconference or in person).
  - (ii) The TA Mediator shall issue such orders as the TA Mediator deems appropriate to the orderly conduct of the mediation.
- (g) If the parties have not reached agreement by the tenth working day of the mediation period, the TA Mediator may direct the parties to file with the TA Mediator and serve each other with PRMs, attested to by the parties, pursuant to a schedule prescribed by the TA Mediator.
  - (i) All PRMs (including replies if permitted by the TA Mediator) shall be submitted no later than the twentieth working day of the mediation period, except as otherwise specified by the TA Mediator, after consultation with the Chief Mediator.
  - (ii) The PRMs shall include:
    - (aa) A summary of the party's most recent offer or counter-offer;
    - (bb) An identification of any information requested by the party but withheld by the other party, including arguments whether such information (i) is essential and (ii) has been unreasonably withheld;
    - (cc) A discussion of any allegation of breach of the duty to negotiate in good faith not based upon the withholding of information;
    - (dd) A discussion of each issue in dispute, with reference to supporting documents or other exhibits contained in an Appendix to the PRM, and the party's proposed resolution of each issue; and
    - (ee) An Appendix containing an index and consecutively paginated copies of all documents and other exhibits the party deems relevant to resolution of the disputed issues, provided that a party need not reproduce material contained

in the other party's Appendix. (A party's PRM may cite to material contained in the other party's Appendix.)

- (iii) Unless otherwise directed by the TA Mediator, the service and filing of PRMs shall be performed electronically by submission in "PDF" format. If a licensee lacks the capacity to serve and file its PRM in "PDF" format, the licensee shall transmit its PRM in "read only" Word or Word Perfect format. The Appendix shall be filed and served in "PDF" format or by facsimile. In the rare case in which a party's Appendix is of such length that the use of "PDF" format or facsimile is impracticable, the party shall file and serve its Appendix by overnight delivery. All submissions by the parties shall be in the form and contain the information set forth in the Annex to this ADR Plan.
- (h) If the parties' dispute involves the costs of reconfiguration, the TA Mediator shall forward each party's final offer or counter-offer to the TA and request reports ("Final FRA Cost Metrics Reports") comparing the parties' respective positions to the TA's Frequency Reconfiguration Agreement Cost Metrics. The TA Mediator shall forward the Final FRA Cost Metrics Reports to the parties. The parties shall have five days to comment on the Final FRA Cost Metrics Reports. The parties' comments, which may not exceed ten double-spaced pages, shall be limited to the contents of the Final FRA Cost Metrics Reports.
- (i) If the parties have not reached agreement by the twentieth working day of the mediation period or, if Final FRA Cost Metrics Reports are prepared, by the date on which the parties comment on the Final FRA Cost Metrics Reports, the TA Mediator shall compile the Record and, unless the Public Safety and Homeland Security Bureau directs otherwise, prepare a Recommended Resolution of the issues in dispute.
- (j) The RR shall include, *inter alia*:
  - (i) A Recommended Resolution of each factual issue in dispute that the TA Mediator deems relevant to the merits of the reconfiguration dispute, including allegations of a breach of the duty to negotiate in good faith, and a statement of reasons for each recommendation. Recommendations with respect to disputed facts shall be based solely upon the matters in the Record. A Recommended Resolution may include alternative recommendations or a recommendation that further proceedings be conducted with respect to particular issues.
  - (ii) A Recommended Resolution of each legal or policy issue in dispute. Recommendations with respect to disputed legal or policy issues shall be based on the Order, TA Policies issued pursuant

thereto, and relevant Commission precedent. In cases in which disputed legal and policy issues are not addressed by the Order, TA Policies or Commission precedent, the RR shall identify these issues for decision by the Commission.

- (k) The mediation proceeding shall not be governed by formal rules of evidence. The TA Mediator shall apply the following evidentiary standards in preparing the RR:
  - (i) Sprint Nextel shall bear the burden of proof as to the comparability of facilities.
  - (ii) The licensee shall bear the burden of proof as to the cost of relocation.
  - (iii) The preponderance of the evidence test shall be applied in recommending the resolution of disputed facts.
- (l) The Record shall consist of:
  - (i) The parties' PRMs (including replies, if any) and any supplements or amendments thereto;
  - (ii) Any stipulations entered into by the parties;
  - (iii) Unless directed otherwise by the Public Safety and Homeland Security Bureau, the RR and all notices or orders issued by the TA Mediator;
  - (iv) TA Policies that are referenced by the TA Mediator in the RR;
  - (v) Written communications and other information relied upon by the TA Mediator in the RR or otherwise determined by the TA Mediator to be appropriate for inclusion in the Record, including any FRA Cost Metrics Reports and Final FRA Cost Metrics Reports; and
  - (vi) Copies of proposed replies or amendments to the parties' PRMs or Appendices that the TA Mediator did not permit or consider in preparing the RR.
- (m) Unless directed otherwise by the Public Safety and Homeland Security Bureau, if the parties have not reached agreement within ten days of the end of the mediation period or, if Final FRA Cost Metrics Reports are prepared, within ten days of the date on which the parties comment on the Final FRA Cost Metrics Reports, the TA Mediator shall:

- (i) Forward the Record and RR to the Public Safety and Homeland Security Bureau;
- (ii) Electronically serve the parties with the RR; and
- (iii) Inform the parties of the date, ten working days after serving the parties, by which each party may file a Statement of Position with the Public Safety and Homeland Security Bureau regarding the issues in dispute.
- (n) The parties are encouraged to continue negotiating after the Record and RR have been submitted to the Bureau.
- (o) If the parties reach agreement as to all of the terms and conditions of a Frequency Reconfiguration Agreement, by accepting the RR or otherwise, they shall provide a copy of such agreement to the TA. Any such agreement shall be subject to the approval of the TA.

## 9. MEDIATION OF DISPUTES INVOLVING CHANGE NOTICES

### A. Overview

The Commission has adopted a Public Notice<sup>15</sup> that applies to the Change Notice process. As outlined by the FCC, licensees are required to submit Change Notice requests concurrently to Sprint Nextel and the TA. Sprint Nextel is obligated to respond to all Change Notice requests within ten working days of receipt of the Change Notice by Sprint Nextel and the TA.

At the request of either party, a TA Mediator shall mediate a dispute involving a Change Notice. Parties may request the mediation of a dispute involving a Change Notice by filing with the TA an RFM in the form set forth on the TA website.

If the parties have not reached agreement within twenty working days of receipt of the Change Notice by Sprint Nextel and the TA, the parties shall enter mediation.

### B. Procedure

- (1) Upon receipt of an RFM or twenty working days after receipt of a Change Notice by Sprint Nextel and the TA, the Chief Mediator shall assign a TA Mediator to mediate the dispute.
- (2) The TA Mediator shall schedule an initial joint or *ex parte* conference with the parties to identify the issues in dispute, establish a schedule for the exchange of information, and determine what further mediation steps, if any, may assist the parties in reaching a voluntary agreement, including further mediation sessions (by teleconference or in person).

<sup>15</sup> *Public Notice*, “FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding,” 22 FCC Rcd 17227 (2007).

- (3) Upon the recommendation of the TA Mediator, the Chief Mediator shall issue a Notice of Commencement of Mediation (“Notice of Commencement”). If the Change Notice involves costs, the TA Mediator may forward the licensee’s Change Notice to the TA and request a Cost Metrics Report.
- (4) The TA Mediator shall issue such orders as the TA Mediator deems appropriate to the orderly conduct of the mediation.
- (5) The TA Mediator may, in his or her discretion, direct the parties to file with the TA Mediator and serve each other with PRMs, attested to by the parties, pursuant to a schedule prescribed by the TA Mediator.
- (6) The PRMs shall include:
  - (a) A summary of the party’s most recent offer or counter-offer;
  - (b) An identification of any information requested by the party but withheld by the other party, including arguments whether such information (i) is essential and (ii) has been unreasonably withheld;
  - (c) A discussion of any allegation of breach of the duty to negotiate in good faith not based upon the withholding of information;
  - (d) A discussion of each issue in dispute, with reference to supporting documents or other exhibits contained in an Appendix to the PRM, and the party’s proposed resolution of each issue; and
  - (e) An Appendix containing an index and consecutively paginated copies of all documents and other exhibits the party deems relevant to resolution of the disputed issues, provided that a party need not reproduce material contained in the other party’s Appendix. (A party’s PRM may cite to material contained in the other party’s Appendix.)
- (7) Unless otherwise directed by the TA Mediator, the service and filing of PRMs shall be performed electronically by submission in “PDF” format. If a licensee lacks the capacity to serve and file its PRM in “PDF” format, the licensee shall transmit its PRM in “read only” Word or Word Perfect format. The Appendix shall be filed and served in “PDF” format or by facsimile. In the rare case in which a party’s Appendix is of such length that the use of “PDF” format or facsimile is impracticable, the party shall file and serve its Appendix by overnight delivery. All submissions by the parties shall be in the form and contain the information set forth in the Annex to this ADR Plan.
- (8) If the parties’ dispute involves the costs of reconfiguration, the TA Mediator may forward each party’s final offer or counter-offer to the TA and request Final Cost Metrics Reports. If Final Cost Metrics Reports are requested, the TA Mediator shall forward them to the parties. The parties shall have five days to comment on



the Final Cost Metrics Reports. The parties' comments, which may not exceed ten double-spaced pages, shall be limited to the contents of the Final Cost Metrics Reports.

- (9) In the absence of a voluntary resolution of the dispute within fifteen working days of the Notice of Commencement, the TA Mediator shall promptly compile the Record and prepare a Recommended Resolution of the issues in dispute.
- (10) The RR shall include, *inter alia*:
  - (a) A Recommended Resolution of each factual issue in dispute that the TA Mediator deems relevant to the merits of the reconfiguration dispute, including allegations of a breach of the duty to negotiate in good faith, and a statement of reasons for each recommendation. Recommendations with respect to disputed facts shall be based solely upon the matters in the Record. A Recommended Resolution may include alternative recommendations or a recommendation that further proceedings be conducted with respect to particular issues.
  - (b) A Recommended Resolution of each legal or policy issue in dispute. Recommendations with respect to disputed legal or policy issues shall be based on the Order, TA Policies issued pursuant thereto, and relevant Commission precedent. In cases in which disputed legal and policy issues are not addressed by the Order, TA Policies or Commission precedent, the RR shall identify these issues for decision by the Commission.
- (11) The mediation proceeding shall not be governed by formal rules of evidence. The TA Mediator shall apply the following evidentiary standards in preparing the RR:
  - (a) Sprint Nextel shall bear the burden of proof as to the comparability of facilities.
  - (b) The licensee shall bear the burden of proof as to the cost of relocation.
  - (c) The preponderance of the evidence test shall be applied in recommending the resolution of disputed facts.
- (12) The Record shall consist of:
  - (a) The parties' PRMs (including replies, if any) and any supplements or amendments thereto;
  - (b) Any stipulations entered into by the parties;
  - (c) The RR and all notices or orders issued by the TA Mediator;
  - (d) TA Policies that are referenced by the TA Mediator in the RR;

- (e) Written communications and other information relied upon by the TA Mediator in the RR or otherwise determined by the TA Mediator to be appropriate for inclusion in the Record, including any Cost Metrics Reports and Final Cost Metrics Reports; and
  - (f) Copies of proposed replies or amendments to the parties' PRMs or Appendices that the TA Mediator did not permit or consider in preparing the RR.
- (13) Unless otherwise directed by the Public Safety and Homeland Security Bureau, if the parties have not resolved their dispute within fifteen working days of the Notice of Commencement or, if Final Cost Metrics Reports are prepared, by the date on which the parties comment on the Final Cost Metrics Reports, the TA Mediator shall, within ten days:
- (a) forward the Record and RR to the Public Safety and Homeland Security Bureau;
  - (b) electronically serve the parties with the RR; and
  - (c) Inform the parties of the date, ten working days after serving the parties, by which each party may file a Statement of Position with the Public Safety and Homeland Security Bureau regarding the issues in dispute.
- (14) The parties are encouraged to continue negotiating after the Record and RR have been submitted to the Bureau.
- (15) If the parties reach agreement by accepting the RR or otherwise, they shall provide a copy of such agreement to the TA. Any such agreement shall be subject to the approval of the TA.

## **10. MEDIATION OF OTHER DISPUTES**

### **A. Availability of TA Mediation**

TA Mediators may also mediate disputes other than those involving the negotiation of Planning Funding Agreements and Frequency Reconfiguration Agreements.

At the request of either party, a TA Mediator shall mediate disputes between Sprint Nextel and a licensee concerning the implementation of their Planning Funding Agreement or Frequency Reconfiguration Agreement, including payment disputes, until such time as the licensee's reconfiguration is complete. Any dispute as to whether a licensee's reconfiguration is complete shall be resolved by the TA Mediator.

If a public safety licensee determines, upon receipt of the report by CMRS carriers contemplated by the Commission's interim interference mitigation requirements, that it expects serious system degradation, the public safety licensee may request a TA Mediator to facilitate mandatory

mediation between the parties. The public safety licensee must serve its request for mediation on all relevant CMRS carriers.

If the Commission does not approve the channel distribution agreement between Southern LINC and Sprint Nextel and the parties are unable to negotiate a revised agreement, a TA Mediator shall mediate the negotiation of a final agreement.

The TA may, in its discretion and at the request of all of the parties, direct a TA Mediator to mediate disputes (other than those set forth in the preceding three paragraphs) that arise during the course of reconfiguring the 800 MHz band and clearing the 1.9 GHz band, or refer the parties to other alternative dispute resolution fora.

Parties may request the mediation of Other Disputes by filing with the TA an RFM in the form set forth on the TA website. In the case of payment disputes involving the implementation of a Planning Funding Agreement or Frequency Reconfiguration Agreement in which payments are made directly to the vendor providing reconfiguration services, the licensee may authorize the vendor to request mediation on its behalf and act in its stead during such mediation by filing an Authorized Request for Mediation (“ARFM”) in the form set forth on the TA website.

## **B. Procedure**

- (1) Upon receipt of an RFM or ARFM and the response of the other party, if any, the Chief Mediator shall make a determination whether mediation is appropriate or required and, if so, shall assign a TA Mediator to mediate the dispute and shall issue a Notice of Commencement.
- (2) The TA Mediator shall schedule an initial telephone conference with the parties, during which the TA Mediator and the parties may, *inter alia*, identify the issues in dispute, establish a schedule for the exchange of information, and determine what further mediation steps, if any, may assist the parties in reaching a voluntary agreement, including further mediation sessions (by teleconference or in person).
- (3) The TA Mediator shall issue such orders as the TA Mediator deems appropriate to the orderly conduct of the mediation.
- (4) The TA Mediator may schedule such in-person or telephonic conferences (with one or both of the parties) as deemed necessary to understand the parties’ positions, explore settlement, hear argument, or request further information from the parties. Absent extraordinary circumstances, there shall not be an oral evidentiary hearing. Upon a finding of extraordinary circumstances, the TA Mediator may conduct an oral evidentiary hearing in which testimony shall be given on the record. Such hearing shall be transcribed unless otherwise directed by the TA Mediator.
- (5) The TA Mediator may, in his or her discretion, direct the parties to file with the TA Mediator and serve each other with PRMs, attested to by the parties, pursuant to a schedule prescribed by the TA Mediator.

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- (6) The PRMs shall include:
- (a) A brief summary of the dispute;
  - (b) An identification of any information withheld by the other party, including arguments whether such information (i) is essential and (ii) has been unreasonably withheld;
  - (c) A discussion of each issue in dispute, with reference to supporting documents or other exhibits contained in an Appendix to the PRM, and the party's proposed resolution of each issue; and
  - (d) An Appendix containing an index and consecutively paginated copies of all documents and other exhibits the party deems relevant to resolution of the disputed issues, provided that a party need not reproduce material contained in the other party's Appendix. (A party's PRM may cite to material contained in the other party's Appendix.)
- (7) Unless otherwise directed by the TA Mediator, the service and filing of PRMs shall be performed electronically by submission in "PDF" format. If a party lacks the capacity to serve and file its PRM in "PDF" format, the party shall transmit its PRM in "read only" Word or Word Perfect format. The Appendix shall be filed and served in "PDF" format or by facsimile. In the rare case in which a party's Appendix is of such length that the use of "PDF" format or facsimile is impracticable, the party shall file and serve its Appendix by overnight delivery. All submissions by the parties shall be in the form and contain the information set forth in the Annex to this ADR Plan.
- (8) In the absence of a voluntary resolution of the dispute within ten days of the filing of a responsive PRM, the TA Mediator shall: (a) forward the Record and RR to the Public Safety and Homeland Security Bureau; (b) notify the parties that the Record and RR have been so forwarded; and (c) inform the parties of the date, ten working days after such notification, by which each party may file a Statement of Position with the Public Safety and Homeland Security Bureau regarding the issues in dispute. The parties are encouraged to continue negotiating after the Record and RR have been submitted to the Bureau.
- (9) The RR shall include, *inter alia*:
- (a) A Recommended Resolution of each factual issue in dispute, and a statement of reasons for each recommendation. Recommendations with respect to disputed facts shall be based solely upon the matters in the Record. A Recommended Resolution may include alternative recommendations or a recommendation that the Commission conduct further proceedings with respect to particular issues.

- (b) A Recommended Resolution of each legal or policy issue in dispute. Recommendations with respect to disputed legal or policy issues shall be based on the Order, TA Policies issued pursuant thereto, and relevant Commission precedent. In cases in which disputed legal and policy issues are not addressed by the Order, TA Policies or Commission precedent, the RR shall identify these issues for decision by the Commission.
- (10) The preponderance of the evidence test shall be applied in recommending the resolution of disputed facts.
- (11) The Record shall consist of:
  - (a) The RFM or ARFM and any response thereto;
  - (b) The parties' PRMs (including replies, if any) and any supplements or amendments thereto;
  - (c) Any stipulations entered into by the parties;
  - (d) The RR and all notices or orders issued by the TA Mediator;
  - (e) TA Policies that are referenced by the TA Mediator in the RR;
  - (f) Written communications and other information relied upon by the TA Mediator in the RR or otherwise determined by the TA Mediator to be appropriate for inclusion in the Record; and
  - (g) Copies of proposed replies or amendments to the parties' PRMs or Appendices that the TA Mediator did not permit or consider in preparing the RR.

## **11. OBJECTIONS TO DECISIONS OF THE TA**

### **A. Decisions Involving Planning Funding Agreements and Frequency Reconfiguration Agreements**

All Planning Funding Agreements and Frequency Reconfiguration Agreements are subject to the approval of the TA. In the event that the TA withholds approval of a Planning Funding Agreement or Frequency Reconfiguration Agreement, the TA shall identify the specific reasons for disapproval and state what modifications are required to obtain approval. A TA decision denying approval of a proposed Planning Funding Agreement or Frequency Reconfiguration Agreement is not subject to mediation by a TA Mediator or review by a non-TA ADR entity. The TA, however, may assign during Stage Two and shall assign during Stage Three a TA Mediator to assist the parties in negotiating a revised Planning Funding Agreement or Frequency Reconfiguration Agreement. The parties may seek review by the Commission of a TA decision denying approval of a Planning Funding Agreement or Frequency Reconfiguration Agreement in accordance with the Order and the Commission's Rules of Practice and Procedure.

Upon receipt of a petition for Commission review of a TA decision denying approval of a Planning Funding Agreement or Frequency Reconfiguration Agreement, the TA shall forward the Record to the Public Safety and Homeland Security Bureau. The Record shall include: the proposed Planning Funding Agreement or Frequency Reconfiguration Agreement; all papers filed by the parties in support of their requests for approval of the Planning Funding Agreement or Frequency Reconfiguration Agreement; the TA's denial of approval; copies of, or references to, all TA Policies and information relied upon by the TA in denying approval of the proposed Planning Funding Agreement or Frequency Reconfiguration Agreement; and, if accepted by the parties, the decision of a non-TA arbitrator resolving their reconfiguration dispute.

#### **B. Other Decisions of the TA**

TA decisions not involving proposed Planning Funding Agreements or Frequency Reconfiguration Agreements are subject to review by the Commission in accordance with the Order and the Commission's Rules of Practice and Procedure; they are not subject to mediation by a TA Mediator or review by a non-TA ADR entity.

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## ANNEX

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### 800 MHz TRANSITION ADMINISTRATOR, LLC ALTERNATIVE DISPUTE RESOLUTION

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In the Matter of	)	
	)	
[Party Name]	)	
	)	
and	)	Mediation No. TAM- _____
	)	TA Mediator _____
Nextel Communications, Inc.	)	

### PROPOSED RESOLUTION MEMORANDUM OF [PARTY NAME]

[Name, address, telephone number and  
e-mail address of the individual  
authorized to participate in TA  
Mediation on behalf of the Party]

[DATE]

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## Table of Contents

[Include a Table of Contents if required by Section 1.49 of the Commission's rules]



## **Summary**

**[Include a Summary if required by Section 1.49 of the Commission's rules]**

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## 800 MHz TRANSITION ADMINISTRATOR, LLC ALTERNATIVE DISPUTE RESOLUTION

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<b>In the Matter of</b>  <b>[Party Name]</b>  <b>and</b>  <b>Nextel Communications, Inc.</b>	) ) ) ) ) ) )	Mediation No. TAM- _____ TA Mediator _____
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### PROPOSED RESOLUTION MEMORANDUM OF [PARTY NAME]

#### I. INTRODUCTION

The presentation and format of Proposed Resolution Memoranda (“PRM”) shall conform to the requirements of Section 1.49 of the rules of practice and procedure of the Federal Communications Commission. *See* 47 C.F.R. § 1.49. Unless otherwise directed by the TA Mediator, the service and filing of PRMs shall be performed electronically by submission in “PDF” format. If a licensee lacks the capacity to serve and file its PRM in “PDF” format, the licensee shall transmit its PRM in “read only” Word or Word Perfect format. The Appendix shall be filed and served in “PDF” format or by facsimile. In the rare case in which a party’s Appendix is of such length that the use of “PDF” format or facsimile is impracticable, the party shall file and serve its Appendix by overnight delivery.

## **II. EACH PRM SHOULD INCLUDE:**

- A. A summary of the party's most recent offer or counter-offer (or, in the case of Other Disputes, a brief summary of the dispute).**
- B. If relevant, an identification of any information requested by the party but withheld by the other party, including arguments whether such information is essential and has been unreasonably withheld.**
- C. If relevant, a discussion of any allegation of breach of the duty to negotiate in good faith not based upon the withholding of information.**
- D. A discussion of each issue in dispute, with reference to supporting documents or other exhibits contained in an Appendix to the PRM, and the party's proposed resolution of each issue.**

## **III. CONCLUSION**

**[The following must be included in all PRMs.]** The undersigned attests that the statements and representations made in this PRM and Appendix are true and accurate to the best of his or her knowledge.

**[PARTY NAME]**

By: \_\_\_\_\_  
**[Signature of executing party] (PRMs must be executed with handwritten signatures and not with electronic signatures. Handwritten signatures do not need to be originals and can include facsimile copies of handwritten signatures.)**

**[Name, address, telephone number and e-mail address of the individual authorized to participate in TA Mediation on behalf of the Party]**

**[DATE]**

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**800 MHz TRANSITION ADMINISTRATOR, LLC**  
**ALTERNATIVE DISPUTE RESOLUTION**

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In the Matter of	)	
	)	
[Party Name]	)	
	)	
and	)	Mediation No. TAM- _____
	)	TA Mediator _____
Nextel Communications, Inc.	)	

**APPENDIX**  
**OF [PARTY NAME]**

**The Appendix should contain an index and consecutively paginated copies of all documents and other exhibits the party deems relevant to resolution of the disputed issues, provided that a party need not reproduce material contained in the other party's Appendix. (A party's PRM may cite to material contained in the other party's Appendix.)**

**CERTIFICATE OF SERVICE**

I hereby certify that on this **[date]**, a true copy of the foregoing Proposed Resolution Memorandum was served electronically and a true copy of the Appendix was served by **[state means used]** upon:

**[Name, address, telephone number and e-mail address of individuals authorized to represent other parties in TA mediation]**

**[Signature of responsible person]**  
**[Name of responsible person]**